

Part 2

Membership Eligibility

49-12-201 System membership -- Eligibility.

- (1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:
 - (a) the date on which the participating employer began participating in this system; or
 - (b) the effective date of employment of the regular full-time employee with the participating employer.
- (2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.
- (3) Notwithstanding the provisions of Subsection (1), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

49-12-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Exceptions -- Nondiscrimination requirements.

- (1)
 - (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
 - (b) In addition to their participation in this system, participating employers may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.
- (2) The following employers may be excluded from participation in this system:
 - (a) an employer not initially admitted or included as a participating employer in this system prior to January 1, 1982 if:
 - (i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or
 - (ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;
 - (b) an employer that is a charter school authorized under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and does not elect to participate in accordance with Section 53A-1a-512;
 - (c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (4); or
 - (d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (4).
- (3) An employer who did not become a participating employer in this system prior to July 1, 1986, may not participate in this system.
- (4)

- (a)
 - (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.
 - (ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs under this chapter.
- (b) An election provided under Subsection (4)(a):
 - (i) is a one-time election made no later than the time specified under Subsection (4)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the special service district;
 - (iii) is irrevocable; and
 - (iv) applies to the special service district as the employer and to all employees of the special service district.
- (c) The governing body of the special service district may offer employee benefit plans for its employees:
 - (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or
 - (ii) under any other program.
- (5)
 - (a) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.
 - (b) For a purchase made under this Subsection (5), an employee is not required to:
 - (i) have at least four years of service credit before the purchase can be made; or
 - (ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Amended by Chapter 15, 2014 General Session

Amended by Chapter 201, 2014 General Session

Amended by Chapter 363, 2014 General Session

49-12-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
 - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;
 - (c) an employee serving as an exchange employee from outside the state;

- (d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;
 - (e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);
 - (g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d); or
 - (h) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
- (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3)
- (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.
 - (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).
 - (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).
- (4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:
- (a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;
 - (b) an elected official;
 - (c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;
 - (d) an employee of the Governor's Office of Management and Budget;
 - (e) an employee of the Governor's Office of Economic Development;
 - (f) an employee of the Commission on Criminal and Juvenile Justice;
 - (g) an employee of the Governor's Office;
 - (h) an employee of the State Auditor's Office;
 - (i) an employee of the State Treasurer's Office;
 - (j) any other member who is permitted to make an election under Section 49-11-406;

- (k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee; and
 - (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members.
- (5)
- (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).
 - (b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.
- (6)
- (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
- (a) file employee exemptions annually with the office; and
 - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.

Amended by Chapter 315, 2015 General Session

Amended by Chapter 364, 2015 General Session

49-12-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

- (1)
- (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or a public or private retirement system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).
 - (b) The election is final, and no right exists to make any further election.
- (2)
- (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
 - (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by the Board of Regents.
 - (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.

- (3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.
- (4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.
- (5)
 - (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education shall have a one-time irrevocable election to participate in this system if the employee:
 - (i) was hired after January 1, 1979;
 - (ii) whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system; and
 - (iii) has service credit in a system under this title.
 - (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
 - (c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.
 - (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.
- (6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment while covered under another retirement program sponsored by the institution of higher education by complying with the requirements of Section 49-11-403.
- (7) The board shall make rules to implement this section.

Amended by Chapter 15, 2014 General Session